



22 CFR Part 41

[Public Notice 11813]

RIN 1400-AE81

Visas: Procedures for Issuing Visas

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is updating its regulation regarding visa applicants' furnishing of signed photographs as required under Section 221(b) of the Immigration and Nationality Act. These updates reflect changes in technology, including the ability to upload digital photographs electronically as part of the online visa application process.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Andrea Lage, Acting Regulatory Coordinator, Visa Services, Department of State, 600 19th St. NW., Washington, DC 20006, (202) 485-7586.

SUPPLEMENTARY INFORMATION:

What changes is the Department making?

This rule clarifies that immigrant and nonimmigrant visa applicants may upload digital photographs electronically as part of the online visa application process in lieu of submitting ink-signed photographs. The electronic signature on the DS-160, Online Nonimmigrant Visa Application, or the biometric signature for the DS-260, Online Application for Immigrant Visa and Alien Registration, pursuant to 22 CFR 41.103(a) or 42.67(a)(3) respectively, shall be considered as signing the digital photograph and any paper photographs that may be otherwise submitted. Additionally, this rule amends the language concerning the nonimmigrant photograph to clarify that the submitted photograph must meet the specifications prescribed by

the Department and deletes language allowing immigrant visa applicants to submit black and white photographs.

Why is the Department promulgating this rule?

Section 221(b) of the Immigration and Nationality Act, 8 U.S.C. 1201(b), states that “[e]ach alien who applies for a visa shall be registered in connection with his application, and shall furnish copies of his photograph signed by him for such use as may be by regulations required.” 22 CFR 41.103(a)(1) requires every noncitizen seeking a nonimmigrant visa to make an electronic application on Form DS-160, the Online Nonimmigrant Visa Application, or, as directed by a consular officer, an application on Form DS-156, Nonimmigrant Visa Application. Applicants must sign the Form DS-160 electronically by clicking the box designated “Sign Application” in the certification section of the application. The Form DS-160 is the electronic version of the nonimmigrant visa application, while the Form DS-156 is the paper-based nonimmigrant visa application and can only be used in limited circumstances.

Generally, immigrant visa applicants must make an electronic application on Form DS-260, the Online Application for Immigrant Visa and Alien Registration, or, as directed by the consular officer, an application on Form DS-230, Application for Immigrant Visa or Alien Registration. Applicants must sign the Form DS-260 electronically by clicking the box designated “Sign Application” in the certification section of the application. Additionally, an immigrant visa applicant submitting a Form DS-260 is required at the time of the interview to swear to or affirm the application and biometrically sign the application.

The purpose of this rule is to remove an outdated sentence from 22 CFR 41.105(a)(3), which requires nonimmigrant visa applicants to “sign (full name) on the reverse side of the photographs” and to clarify that electronic and/or biometric signature of the appropriate visa application is deemed the signature on all submitted photographs, either digitally or on paper. In the late 1990s, the Department began the modernization of its visa adjudication and issuance systems and procedures. Part of that initiative involved digitizing the photograph collection

process. During this time, the consular officers began to scan the paper photographs provided by nonimmigrant visa applicants and return the photographs to the applicant, using the scanned copy for all adjudication and recordkeeping purposes. In 2010, the Department announced that it would be transitioning from a paper-based application process to an electronic/online application process. As a part of this transition, the Department also transitioned to a combination of electronic signature (“click and submit” signature) and biometric signature as well as online digital photograph collection. The digital photograph was rolled out slowly, with some posts adopting digital photograph collection simultaneously with the online application, while some posts delayed the digital photograph collection until their applicant pool adjusted to the online application procedure. As of 2021, nearly all posts use the digital photo collection tool as part of the online nonimmigrant visa application process. Digital photo collection reduces administrative burdens on consular posts, which otherwise would have to scan physical photographs for hundreds to thousands of visa applicants each day, and on applicants who no longer need to provide physical copies of their photographs. In cases where an applicant is unable to upload a photo that meets the specific requirements, the applicant may submit a printed photo to the U.S. embassy or consulate where they are applying for a visa. Under the Modernized Immigrant Visa (MIV) processing, applicants can upload a photograph as part of the required documentation along with the DS-260. For non-MIV paper-based immigrant visa cases, applicants may still bring a paper photograph at the time of interview which is then scanned and uploaded. Immigrant visa applicants may also be required to supply additional photographs at the time of their interview; those photographs may be included in the paper-based immigrant visa packet that the individual carries with them when they travel to the United States. The applicants then hand the completed packets to the Department of Homeland Security. MIV cases do not require paper packets and are digitally processed.

Under existing Department practice, submission of a digital photograph along with an online visa application that the applicant signs electronically or biometrically is sufficient to

meet the requirement of furnishing signed photographs under INA section 221(b), 8 U.S.C. 1201(b). This rule would not change current practice, but only clarify the regulation to reflect this option.

Additionally, the Department is revising the immigrant and nonimmigrant visa photograph rules for consistency. Longstanding practice for digital and paper photographs is consistent for both immigrant and nonimmigrant applicants but regulations are inconsistent as to technical requirements. To clarify this potential inconsistency and to ensure that the Department can readily collect photographs that reflect current best practices, the Department is revising nonimmigrant requirements to be consistent with the immigrant requirements. The Department is also deleting from the immigrant visa photo rule language that allowed for the submission of black and white photographs. That language is outdated, and the Department is not aware of any country where the submission of color photographs is unavailable.

Regulatory Findings

Administrative Procedure Act

This rule is issued without prior notice and comment pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. 553(b)(A), because it re-states existing agency procedure or practice. As noted in the Preamble, under existing Department practice, submission of a digital photograph, along with an online visa application that the applicant signs electronically, is already considered sufficient to meet the requirement of furnishing signed photographs under INA section 221(b), 8 U.S.C. 1201(b). The purpose of this rule is to align the regulatory text with this existing Department practice and interpretation of 8 U.S.C. 1201(b). Therefore, the Department is issuing this amendment as a final rule. In accordance with the APA, it is effective 30 days after publication.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this final rule is exempt from notice and comment rulemaking under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act, 5 U.S.C. 603 and 604.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804(2), for purposes of congressional review of agency rulemaking under the Congressional Review Act. At this time, the Department does not believe that this rule will result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Executive Orders 12866, and 13563: Reducing Regulation and Controlling Regulatory Cost

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563, and has determined that the benefits of this regulation, *i.e.*, updating these rules to account for modern technological advancements, outweigh any cost, which the Department assesses to be minimal.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or revise any reporting or record-keeping requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 41

Aliens, Employment, Foreign Officials, Immigration, Students, Passports and Visas.

22 CFR Part 42

Aliens, Immigration and Visas.

Accordingly, for the reasons stated in the preamble, 22 CFR parts 41 and 42 are amended as follows:

**PART 41 – VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

1. The authority citation for part 41 continues to read as follows:

Authority: 22 U.S.C. 2651a; 8 U.S.C. 1104; 8 U.S.C. 1182(d); 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295); 112 Stat. 2681-795.

2. Amend § 41.105 by revising paragraph (a)(3) to read as follows:

(a) § 41.105 Supporting documents and fingerprinting.***

(3) *Photographs required.* Every applicant for a nonimmigrant visa must furnish photographs of the number and specification prescribed by the Department. The applicant must either upload a digital photograph electronically as part of submitting an online visa application

or submit a paper photograph at the direction of the Department or consular officer. The photograph shall be considered signed when the applicant signs the appropriate application form pursuant to § 41.103(b)(3).

* * * * *

**PART 42 – VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE
IMMIGRATION AND NATIONALITY ACT, AS AMENDED**

3. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105-277, 112 Stat. 2681; Pub. L. 108-449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105-51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901-14954 (Pub. L. 106-279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111-287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109-162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114-70, 129 Stat. 561).

4. Amend § 42.65 by revising paragraph (f) to read as follows:

§ 42.65 Supporting documents.

* * * * *

(f) *Photographs.* Every applicant shall furnish photographs of the number and specifications prescribed by the Department. The applicant must either upload a digital photograph electronically as part of submitting an online visa application, or a paper photograph at the direction of the Department. The photograph shall be considered signed when the applicant biometrically signs and executes the application under oath pursuant to § 42.67(a).

Zachary Parker,

Director,

Office of Directives Management,

Department of State.

Billing Code 4710-06

[FR Doc. 2023-04405 Filed: 3/3/2023 8:45 am; Publication Date: 3/6/2023]